

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
HOUSE BILL NO. 1318
96TH GENERAL ASSEMBLY

4793S.02T

2012

AN ACT

To repeal sections 407.1355, 630.170, and 632.501, RSMo, and to enact in lieu thereof five new sections relating to facilities that conduct mental health services, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 407.1355, 630.170, and 632.501, RSMo, are repealed and five new
2 sections enacted in lieu thereof, to be known as sections 407.1355, 559.117, 630.170, 630.945,
3 and 632.501, to read as follows:

407.1355. 1. Except as provided in this section a person or entity, not including a state
2 or local agency, shall not do any of the following:

3 (1) Publicly post or publicly display in any manner an individual's Social Security
4 number. "Publicly post" or "publicly display" is defined in this section to intentionally
5 communicate or otherwise make available to the general public or to an individual's co-workers;

6 (2) Require an individual to transmit his or her Social Security number over the Internet,
7 unless the connection is secure or the Social Security number is encrypted;

8 (3) Require an individual to use his or her Social Security number to access an internet
9 website, unless a password, unique personal identification number, or other authentication device
10 is also required to access the internet website;

11 (4) Require an individual to use his or her Social Security number as an employee
12 number for any type of employment-related activity;

13 **(5) Require an individual to use the last four digits of his or her Social Security**
14 **number as an employee number for any type of employment-related activity.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 2. The provisions of [subsection 1 of this section apply only to the use of Social Security
16 numbers on or after January 1, 2006] **subdivision (5) of subsection 1 of this section shall only**
17 **apply to such use after December 31, 2015.**

18 3. This section does not prevent the collection, use, or release of a Social Security
19 number as required by state or federal law or the use of a Social Security number for internal
20 verification or administrative purposes.

21 4. This section does not apply to documents that are recorded or required to be open to
22 the public pursuant to chapter 610. This section does not apply to records that are required by
23 statute, case law, or Missouri court rules to be made available to the public.

24 5. If a federal law takes effect requiring the United States Department of Health and
25 Human Services to establish a national unique patient health identifier program, any person or
26 entity that complies with the federal law shall be deemed in compliance with this section.

559.117. 1. The director of the department of corrections is authorized to establish,
2 **as a three-year pilot program, a mental health assessment process.**

3 **2. Only upon a motion filed by the prosecutor in a criminal case, the judge who is**
4 **hearing the criminal case in a participating county may request that an offender be placed**
5 **in the department of corrections for one hundred twenty days for a mental health**
6 **assessment and for treatment if it appears that the offender has a mental disorder or**
7 **mental illness such that the offender may qualify for probation including community**
8 **psychiatric rehabilitation (CPR) programs and such probation is appropriate and not**
9 **inconsistent with public safety. Before the judge rules upon the motion, the victim shall**
10 **be given notice of such motion and the opportunity to be heard. Upon recommendation**
11 **of the court, the department shall determine the offender's eligibility for the mental health**
12 **assessment process.**

13 **3. Following this assessment and treatment period, an assessment report shall be**
14 **sent to the sentencing court and the sentencing court may, if appropriate, release the**
15 **offender on probation. The offender shall be supervised on probation by a state probation**
16 **and parole officer, who shall work cooperatively with the department of mental health to**
17 **enroll eligible offenders in community psychiatric rehabilitation (CPR) programs.**

18 **4. Notwithstanding any other provision of law, probation shall not be granted**
19 **under this section to offenders who:**

20 **(1) Have been found guilty of, or plead guilty to, murder in the second degree under**
21 **section 565.021;**

22 **(2) Have been found guilty of, or plead guilty to, forcible rape under section**
23 **566.030;**

24 **(3) Have been found guilty of, or plead guilty to, statutory rape in the first degree**
25 **under section 566.032;**

26 **(4) Have been found guilty of, or plead guilty to, forcible sodomy under section**
27 **566.060;**

28 **(5) Have been found guilty of, or plead guilty to, statutory sodomy in the first**
29 **degree under section 566.062;**

30 **(6) Have been found guilty of, or plead guilty to, child molestation in the first**
31 **degree under section 566.067 when classified as a class A felony;**

32 **(7) Have been found to be a predatory sexual offender under section 558.018; or**

33 **(8) Have been found guilty of, or plead guilty to, any offense for which there exists**
34 **a statutory prohibition against either probation or parole.**

35 **5. At the end of the three-year pilot, the director of the department of corrections**
36 **and the director of the department of mental health shall jointly submit recommendations**
37 **to the governor and to the general assembly by December 31, 2015, on whether to expand**
38 **the process statewide.**

630.170. 1. A person who is listed on the department of mental health disqualification
2 registry pursuant to this section, who is listed on the department of social services or the
3 department of health and senior services employee disqualification list pursuant to section
4 660.315, or who has been convicted of or pled guilty or nolo contendere to any crime pursuant
5 to section 565.210, 565.212, or 565.214, or section 630.155 or 630.160 shall be disqualified from
6 holding any position in any public or private facility [or] , day program, **residential facility, or**
7 **specialized service** operated, **licensed, certified, accredited, in possession of deemed status,**
8 **or** funded [or licensed] by the department or in any mental health facility or mental health
9 program in which people are admitted on a voluntary or involuntary basis or are civilly detained
10 pursuant to chapter 632.

11 2. A person who has been convicted of or pled guilty or nolo contendere to any felony
12 offense against persons as defined in chapter 565; any felony sexual offense as defined in chapter
13 566; any felony offense defined in section 568.020, 568.045, 568.050, 568.060, 569.020,
14 569.025, 569.030, 569.035, 569.040, 569.050, 569.070, or 569.160, or of an equivalent felony
15 offense, or who has been convicted of or pled guilty or nolo contendere to any violation of
16 subsection 3 of section 198.070, or has been convicted of or pled guilty or nolo contendere to any
17 offense requiring registration under section 589.400, shall be disqualified from holding any
18 direct-care position in any public or private facility, day program, residential facility or
19 specialized service operated, **licensed, certified, accredited, in possession of deemed status,**
20 **or** funded [or licensed] by the department or any mental health facility or mental health program
21 in which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632.

22 3. A person who has received a suspended imposition of sentence or a suspended
23 execution of sentence following a plea of guilty to any of the disqualifying crimes listed in
24 subsection 1 or 2 of this section shall remain disqualified.

25 4. Any person disqualified pursuant to the provisions of subsection 1 or 2 of this section
26 may seek an exception to the disqualification from the director of the department or the director's
27 designee. The request shall be written and may not be made more than once every [twelve] **six**
28 months. The request may be granted by the director or designee if in the judgment of the director
29 or designee a clear showing has been made by written submission only, that the person will not
30 commit any additional acts for which the person had originally been disqualified for or any other
31 acts that would be harmful to a patient, resident or client of a facility, program or service. The
32 director or designee may grant an exception subject to any conditions deemed appropriate and
33 failure to comply with such terms may result in the person again being disqualified. **Any person**
34 **placed on the disqualification registry prior to August 28, 2012, may be removed from the**
35 **registry by the director or designee if in the judgment of the director or designee a clear**
36 **showing has been made, by written submission only, that the person will not commit any**
37 **additional acts for which the person had originally been disqualified for or any other acts**
38 **that would be harmful to a patient, resident, or client of a facility, program, or service.**

39 Decisions by the director or designee pursuant to the provisions of this subsection shall not be
40 subject to appeal. The right to request an exception pursuant to this subsection shall not apply
41 to persons who are disqualified due to being listed on the department of social services or
42 department of health and senior services employee disqualification list pursuant to section
43 660.315, nor to persons disqualified from employment due to any crime pursuant to the
44 provisions of chapter 566 or section 565.020, 565.021, 568.020, 568.060, 569.025, or 569.070.

45 5. An applicant for a [direct care] position in any public or private facility, day program,
46 residential facility, or specialized service operated, **licensed, certified, accredited, in possession**
47 **of deemed status, or funded**[, or licensed] by the department or any mental health facility or
48 mental health program in which people are admitted on a voluntary basis or are civilly detained
49 pursuant to chapter 632 shall:

50 (1) Sign a consent form as required by section 43.540 to provide written consent for a
51 criminal record review;

52 (2) Disclose the applicant's criminal history. For the purposes of this subdivision
53 "criminal history" includes any suspended imposition of sentence, any suspended execution of
54 sentence, or any period of probation or parole; and

55 (3) Disclose if the applicant is listed on the employee disqualification list as provided
56 in section 660.315, or the department of mental health disqualification registry as provided for
57 in this section.

58 6. Any person who has received a good cause waiver issued by the [division of]
59 **department of health and** senior services or its predecessor under subsection 9 of section
60 660.317 shall not require an additional exception under this section in order to be employed in
61 a long-term care facility licensed under chapter 198.

62 7. Any public or private residential facility, day program, or specialized service
63 **operated, licensed, certified, accredited, in possession of deemed status,** or funded by the
64 department **or any mental health facility or mental health program in which people are**
65 **admitted on a voluntary basis or are civilly detained pursuant to chapter 632** shall, not later
66 than two working days after hiring any person for a full-time, part-time, or temporary position
67 that will have contact with clients, residents, or patients:

68 (1) Request a criminal background check as provided in section 43.540;

69 (2) Make an inquiry to the department of social services and department of health and
70 senior services to determine whether the person is listed on the employee disqualification list as
71 provided in section 660.315; and

72 (3) Make an inquiry to the department of mental health to determine whether the person
73 is listed on the disqualification registry as provided in this section.

74 8. An applicant who knowingly fails to disclose his or her criminal history as required
75 in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class
76 A misdemeanor if the provider hires a person to hold a direct-care position knowing that such
77 person has been disqualified pursuant to the provisions of subsection [1 or] 2 of this section. **A**
78 **provider is guilty of a class A misdemeanor if the provider hires a person to hold any**
79 **position knowing that such person has been disqualified pursuant to the provisions of**
80 **subsection 1 of this section.**

81 9. Any public or private residential facility, day program, or specialized service
82 **operated, licensed, certified, accredited, in possession of deemed status or funded by the**
83 **department or any mental health facility or mental health program in which people are**
84 **admitted on a voluntary basis or are civilly detained pursuant to chapter 632 that declines**
85 **to employ or discharges a person who is disqualified pursuant to the provisions of**
86 **subsection 1 or 2 of this section shall be immune from suit by that person or anyone else**
87 **acting for or in behalf of that person for the failure to employ or for the discharge of the**
88 **person due to disqualification.**

89 10. Any employer who is required to discharge an employee because the employee
90 was placed on a disqualification registry maintained by the department of mental health
91 after the date of hire shall not be charged for unemployment insurance benefits based on
92 wages paid to the employee for work prior to the date of discharge pursuant to section
93 **288.100.**

11. The department [may] **shall** maintain a disqualification registry and place on the registry the names of any persons who have been finally determined by the department to be disqualified [pursuant to this section, or who have had] **based upon** administrative substantiations made against them for abuse or neglect pursuant to department rule **or regulation**. Such list shall reflect that the person is barred from holding any position in any public or private facility [or] , day program, **residential facility, or specialized service** operated, **licensed, certified, accredited, in possession of deemed status, or** funded [or licensed] by the department, or any mental health facility or mental health program in which persons are admitted on a voluntary basis or are civilly detained pursuant to chapter 632. **The length of time the person's name shall appear on the disqualification registry shall be determined by the director or the director's designee, based upon the criteria contained in subsection 13 of this section.**

12. Persons notified that their name will be placed on the disqualification registry may appeal such determination pursuant to department rule or regulation. If the person appeals, the hearing tribunal shall not modify the length of time the person's name shall appear on the disqualification registry if the hearing tribunal upholds all of the administrative substantiations made by the director or the director's designee. If the hearing tribunal overturns part of the administrative substantiations made by the director or the director's designee, the hearing tribunal may consider modifying the length of time the person's name shall appear on the disqualification registry based upon testimony and evidence received during the hearing.

13. The length of time the person's name shall appear on the disqualification registry shall be determined by the director or the director's designee based upon the following:

- (1) Whether the person acted recklessly or knowingly, as defined in chapter 562;
- (2) The degree of actual or potential injury or harm to the patient, resident, or client;
- (3) The degree of actual or potential danger to the health, safety, or welfare of the patient, resident, or client;
- (3) The degree of misappropriation or conversion of patient, resident, or client funds or property;
- (4) Whether the person has previously been listed on the department's disqualification registry;
- (5) Any mitigating circumstances; and
- (6) Any aggravating circumstances.

129 **14. The department shall provide the disqualification registry maintained pursuant**
130 **to this section to other state and federal agencies upon request. The department may**
131 **provide the disqualification registry maintained pursuant to this section to any public or**
132 **private facility, day program, residential facility, or specialized service operated, licensed,**
133 **certified, accredited, in possession of deemed status, or funded by the department or to any**
134 **mental health facility or mental health program in which people are admitted on a**
135 **voluntary or involuntary basis or are civilly detained pursuant to chapter 632. The**
136 **department may also provide the disqualification registry to a recognized school of**
137 **nursing, medicine, or other health profession for the purpose of determining whether**
138 **students scheduled to participate in clinical rotations are included in the employee**
139 **disqualification registry.**

630.945. Beginning July 1, 2013, no state employee, regardless of job classification,
2 **who is working in a maximum or intermediate security mental health facility or any**
3 **portion of a mental health facility which has maximum or intermediate security shall be**
4 **mandated to work more than twelve hours in any twenty-four hour period unless the**
5 **department of mental health declares an emergency workforce shortage.**

 632.501. If the director of the department of mental health determines that the person's
2 mental abnormality has so changed that the person is not likely to commit acts of sexual violence
3 if released, the director shall authorize the person to petition the court for release. The petition
4 shall be served upon the court that committed the person, **the prosecutor of the jurisdiction**
5 **into which the committed person is to be released,** the director of the department of mental
6 health, the head of the facility housing the person, and the attorney general. The hearing and
7 trial, if any, shall be conducted according to the provisions of section 632.498.

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